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No. 91-5087 (4)

Supreme Court, U.S.
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SEP 19 1991

# In The

# Supreme Court of the United States

**October Term, 1991**

MARIO ENRIQUEZ-NEVAREZ,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Petition for Writ of Certiorari**
**to the**
**United States Court of Appeals for the Fifth Circuit**

## REPLY BRIEF OF PETITIONER

LUCIEN B. CAMPBELL
Federal Public Defender
Western District of Texas
727 E. Durango Blvd., B-207
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(512) 229-6700

*Counsel of Record for Petitioner*

HENRY J. BEMPORAD
Assistant Federal Public Defender
Western District of Texas

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MARIO ENRIQUEZ-NEVAREZ,

*Petitioner*,

v.

UNITED STATES OF AMERICA,

*Respondent*.

---

On Petition for Writ of Certiorari
to the
United States Court of Appeals for the Fifth Circuit

---

## REPLY BRIEF OF PETITIONER

---

Pursuant to Supreme Court Rule 15.6, Petitioner Mario Enriquez-Nevarez, files this Reply to the Brief for the United States of America in Opposition to Petitioner's Petition for Writ of Certiorari.



## INTRODUCTION

Before the district court, Petitioner claimed that New Mexico detectives had stopped the truck he was driving on a pretextual basis: while the detectives stated that the truck was stopped because of a broken tail light, it was actually stopped with the improper intent to search for evidence of a crime. The district court refused Petitioner a hearing on the motion, on the ground that, under *United States v. Causey*, 834 F.2d 1179 (5th Cir. 1987) (en banc) there was "no more pretext stop law" in the Fifth Circuit. Pet. App. B. Although Petitioner argued that Fifth Circuit precedent on pretextual seizure law did not foreclose his motion, the court of appeals affirmed. It held that "the district court correctly applied *Causey* and did not abuse its discretion in failing to conduct a hearing on the motion." Pet. App. A, at 7.

Petitioner has now requested that this Court grant certiorari on the following question:

> Whether a pretextual traffic stop—*i.e.*, a stop made under facially legal authority but with the improper intent to search for evidence—is *per se* reasonable under the Fourth Amendment.

Pet. at *i*. In response, the Government asserts that the question presented by Petitioner "does not raise a conflict calling for this Court's review," Brf. in Opp. at 5; further, it contends that Petitioner's motion was properly denied because it was untimely and because the agents had reasonable suspicion to stop the truck under the test enunciated in *Terry v. Ohio*, 392 U.S. 1 (1968). Because Petitioner has already fully addressed the state of pretextual stop law in the lower courts, he replies briefly only to the latter two arguments.

## ARGUMENT

In support of its opposition to the petition, the Government relies on two grounds not reached by the court of appeals: (1) that Petitioner's motion was untimely; and (2) that the officers' actions were based upon a reasonable articulable suspicion, derived from facts other than the broken taillight for which the truck was ostensibly stopped. For the reasons set out below, these contentions have no merit.

## I. PETITIONER'S MOTION WAS TIMELY.

In a footnote, the Government asserts that Petitioner's motion was properly denied without a hearing because it was not timely presented. Brf. in Opp. at 11 n.6. This assertion apparently relies upon an earlier footnote in the Government's brief, in which the Government claims that "petitioner clearly knew of the stop well before trial, and the government had indicated two months earlier that it intended to present evidence about the stop," and that "petitioner could have filed a timely motion if he had conducted an investigation." Brf. in Opp. at 4-5 n.2. The court of appeals also noted the existence of this issue, but it expressly declined to reach the question of whether the motion was timely. Pet. App. A at 7-8 n.2.

The Government's assertions ignore the actual proceedings in the case. Petitioner's motion to suppress was based on information contained in a detective's notes, disclosed by the Government on the afternoon before trial. These notes, which were disclosed in accordance with the requirements of the Jencks Act, 18 U.S.C. § 3500, indicated for the first time that (1) Albuquerque detectives had initiated the stop, rather than the New Mexico State Police; and (2) that Petitioner had made statements during the stop.[1] The court of appeals noted that the Government had mentioned the stop in a response to Petitioner's motion to sever on April 10, 1990. Pet. App. A at 7 n.2. The response, however, did not explain the circumstances of the search of the vehicle, nor did it mention that Petitioner had made statements at the time.[2] Indeed, the Government's failure to disclose Petitioner's statements was in direct contravention to the discovery order entered in the case. The standing discovery order, filed on February 16, 1990, required that "within seven (7) days from the date" the order is entered:

> The government shall permit the defendant to inspect and copy the following items or copies thereof, or supply copies thereof which are within the possession, custody or control of the government, the existence of which is known or by the exercise of diligence may become known to the government.
>
> (1) Written or recorded statements made by the defendant.
>
> (2) The substance of any oral statement made by the defendant before or after his arrest in response to interrogation by a person then known to be a government agent which the government intends to offer in evidence at trial.[3]

Thus, the lateness of the motion to suppress resulted in part from the Government's failure to comply with the district court's discovery order.

With regard to the claim that defense counsel failed to exercise due diligence in investigating the circumstances of the stop, it is clear that no amount of diligence would have necessarily led to the discovery that the New Mexico stop was supervised by the Albuquerque detectives and effected for pretextual reasons. The only sources of information regarding the real motivation for the stop were the detectives and their notes. The detectives were under no requirement to discuss the case with the defense; moreover, their notes were required to be disclosed only if they testified at trial. 18 U.S.C. § 3500(b). Until trial, "no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be subject to subpoena, discovery, or inspection." 18 U.S.C. § 3500(a). Given the limits placed upon defense counsel by statute, and the Government's failure to disclose Petitioner's statements in accordance with the discovery order, it is disingenuous for the Government to assert that documents in its possession were discoverable by the defense prior to their release on the eve of trial. This Court should not rely on the asserted untimeliness of Petitioner's motion as a ground for refusing to review his claim, especially where the court of appeals did not.

---

[1]The notes are attached to this reply as Addendum A.

[2]The response to the motion to sever is attached to this reply as Addendum B.

[3]The order is attached to this reply as Addendum C.

## II. THE STOP OF THE TRUCK WAS NOT SUPPORTED BY REASONABLE SUSPICION INDEPENDENT OF THE PRETEXTUAL TRAFFIC VIOLATION.

The Government also asserts that, "wholly apart from petitioner's broken tail light, the stop in this case is justified under *Terry v. Ohio*, 392 U.S. 1 (1968)." Brief in Opposition at 11. This issue was not reached by either the district court or the court of appeals, and it provide no basis for denying certiorari in this case.

The Government relies on the court of appeals' opinion for its assertion that, while maintaining surveillance on the residence of a "known narcotics trafficker," the detectives "saw petitioner engage in what they believed was a narcotics transaction with an occupant of Montoya's residence." Brf. in Opp. at 2 (citing Pet. App. A at 2). However, the court of appeals noted only that "Enriquez went to the residence." Pet. App. A, at 2. Moreover, the agent's testimony, on which the Government relies in making its *Terry* argument, was limited to the statement that the agents saw "what [they] believed was a transaction between Enriquez and one of the occupants of the residence."[4] See Brf. in Opp. at 11. No drugs were seen by the agents, thus leaving it to speculation as to what sort of "transaction" took place.

Even if it can be inferred that the agents had reason to that suspect an illegal transaction had occurred, however, this would not support the stop. Any suspicion the agents might have had evaporated when Petitioner did not go to a reputed "stash" location thirty miles outside of town, as expected, but instead travelled further south. See Pet. App. A. at 2. Nevertheless, the agents continued to follow Petitioner, stopping him after following "for about sixty or seventy miles." *Id.* at 3. The record reveals no reason for this continued surveillance; moreover, the detective's notes clearly indicate that the "vehicle was stopped for having a broken tail light," not for the reasons supplied by the Government for the first time in its response to the petition for certiorari. For all

[4]This portion of the agent's testimony is attached as Addendum D to this reply.



these reasons, *Terry* cannot be invoked to justify the agents' actions, and certainly not at this late hour.

The court of appeals held, and the Government asserts, that Petitioner's conclusory allegations as to the pretextual nature of the stop did not entitle him to relief. Pet. App. A. at 7; Brf. in Opp. at 10–11. This is erroneous. Petitioner supplied the district court with the detective's notes, which clearly showed that the traffic stop was pretextual. Thus, for Petitioner to have been properly denied a hearing, it was necessary for the district court and the court of appeals to conclude that pretextual stops are *per se* reasonable under the Fourth Amendment. The lower courts' conclusion reflects an incorrect reading of the requirements of the Constitution, and Petitioner asks the Court to grant certiorari to review this important issue.

## CONCLUSION

For the foregoing reasons, and for those reasons set out in the Petition for Certiorari, the Court should grant review by certiorari.

Respectfully submitted.

LUCIEN B. CAMPBELL
Federal Public Defender
Western District of Texas
727 E. Durango Blvd., B-207
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(512) 229-6700

*Counsel of Record for Petitioner*

HENRY J. BEMPORAD
Assistant Federal Public Defender

**ADDENDUM A**

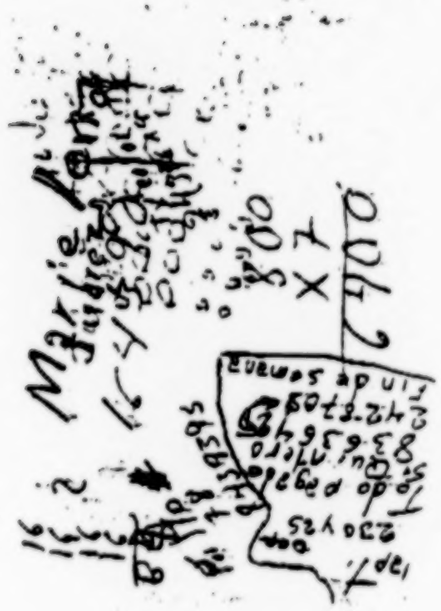
DETECTIVE'S NOTES, FILED AS AN EXHIBIT
TO PETITIONER'S MOTION TO SUPPRESS
OR MOTION IN LIMINE C,
JUNE 21, 1990

G.I. STATEMENT/NOTES + PAPERS
RECOVERED FROM TRASH

① Detectives observed the vehicle traveling southbound on Interstate 25.
② A state police officer was flagged down for assistance. Vehicle was stopped for having a broken tail light
③. Both subjects were asked to exit the truck. Detective Torres explained why they were stop Detective showed them the detective light
④. Both subjects asked why detectives were at that location... Enriquez was advised that w had information that he had a load of meth and that he sold alot of cocaine is Alb.
⑤ Enriquez advised that people don't take drug to Mexico, but that they [redacted] from the
⑥ Subjects claimed they were going to Juarez for bottled cokes and a bumper for his newly painted truck
⑦ Enriquez was asked for permission to search his truck. He agreed to allow detectives to search was fruitless
⑧ During the search of the truck detectives observed a New Mexico truck plate under the seat
⑨ Both subject agreed to a search of their body - Castillo appeared to be nervous while detective spoke to them

1415 Hrs
Blue Van at
Richard Montoyas
on Bethel
Possible Exchange
Lots of People (NMA)
1445 Hrs
Blue Van
Goes to Englewood

1513 Hrs
Blue Van
Goes to Hacienda
Motel Back
S.E. Corner



Lost in traffic
Blue Truck (Possible traffic)
following Van

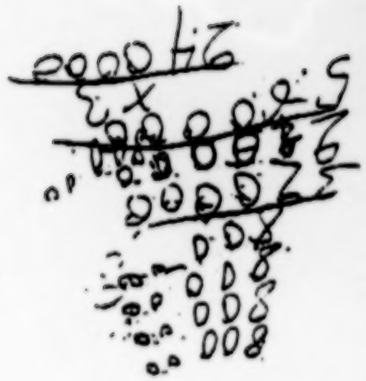
1613 Hrs
Blue Van +
Truck arrive at
Englewood.

1632 Hrs
Taking Holding
N.M. Plate gets
into truck w/other
NMA in Cowboy Hat
1637 Hrs

[redacted]
1817 Hrs
Flag Down State
Police Vehicle
Stopped for No
Tail Light Vehicle
Searched Neg Results
Ident Plate # 115347
N.M. Plate in
Vehicle NM 444-620

1415 Hrs
Blue Van at
Richard Montoyas
on Bethel
Possible Exchange
Lots of People (NMA)
1445 Hrs
Blue Van
Goes to Englewood

1513 Hrs Blue Van
Goes to Hacienda
Motel Back
S.E. Corner



(9)

Knocks - No answer
Possibly #7

1522
Blue Van
at D.I. Lounge
Picks up S.M.A.
W/cowboy Hat

Blue Van leaves
Lost in traffic

1550 Hrs
Van found at

[redacted]
1817 Hrs
Flag Down State
Police Vehicle
Stopped for No
Tail Light Vehicle
Searched Neg Results
Ident Plate # 115347
N.M. Plate in
Vehicle NM 444-620

# ADDENDUM B

GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION TO SEVER,
APRIL 10, 1990.



FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION '90

CLERK, U.S. DISTRICT CLERK
BY _____
DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

V.

RIGOBERTO CASTILLO-OLIVAS, and MARIO ENRIQUEZ-NEVAREZ,

Defendants.

EP-90-CR-53(H)

FEDERAL PUBLIC DEFENDER
RECEIVED
APR 11 1990
WESTERN DIST. OF TEXAS
EL PASO, TEXAS

## GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO SEVER

Comes now the United States of America, by the United States Attorney for the Western District of Texas, Ronald F. Ederer, and Assistant United States Attorney Guy Till, and hereby files the Government's Response to the Defendant's Motion to Sever, filed in the above numbered and styled case.

I.

## STATEMENT OF FACTS

On January 31, 1990, Defendants, Mario Enriquez-Nevarez and Rigoberto Castillo-Olivas, entered the United States in two trucks. Mr. Enriquez-Nevarez was referred to secondary inspection because he was alone in the truck (the truck had Idaho plates), and Mr. Enriquez apparently had no luggage.

Mr. Castillo-Olivas became extremely nervous when questioned by Inspector Rodriguez. Mr. Castillo-Olivas stated he had been in Mexico for one day to visit relatives and the truck belonged to a friend. After tapping the gas tank and hearing a dull thud, Inspector Rodriguez took Mr.

Castillo-Olivas into the Customs head-house. Mr. Castillo-Olivas was patted down for any weapons. Inspector Rodriguez asked Mr. Castillo-Olivas if he was travelling alone. Mr. Castillo-Olivas replied that the driver of the truck with Idaho plates in secondary inspection was travelling with him.

Shortly afterward, Inspector Cordero asked Mr. Castillo-Olivas who owned the truck he was driving. Mr. Castillo-Olivas replied that the truck belonged to Mr. Enriquez-Nevarez. Inspector Cordero asked where Mr. Enriquez-Nevarez was, and Mr. Castillo-Olivas replied that Mr. Enriquez-Nevarez was with the pickup truck with Idaho plates in the secondary inspection area. Mr. Castillo-Olivas further stated to Inspector Cordero that the purpose of their trip to Mexico was to pick up the pickup driven by Mr. Castillo-Olivas. Inspector Cordero detained Mr. Enriquez-Nevarez.

The truck being driven by Mr. Castillo-Olivas was registered to a Luz E. Montano of Farmington, New Mexico 87499. Mr. Castillo-Olivas had a Certificate of Title in his possession. Also recovered was a New Mexico traffic ticket issued to Mr. Enriquez-Nevarez on January 30, 1990 on Interstate Highway 25 at Mile Post 152.





After his arrest, Mr. Castillo-Olivas made a statement in which he related that he had known Mr. Enriquez-Nevarez for about ten (10) years. Mr. Castillo-Olivas said that Mr. Enriquez-Nevarez invited Mr. Castillo-Olivas to come to Juarez and pick up a truck that belonged to Mr. Enriquez-Nevarez. According to Mr. Castillo-Olivas, the two men were stopped by the New Mexico State Police on the way down to Mexico on January 30, 1990, and the truck was then searched by plainclothes police officers. Mr. Castillo-Olivas said he became suspicious of the trip after the truck was searched, but continued on with the trip because he had no independent way to get home.

II.

CITATION OF AUTHORITIES AND ARGUMENT

The Defendants are charged with conspiracy. Bruton v. United States, 391 U.S. 123 (1968), held that a co-defendant's post-conspiracy confession implicating another defendant is inadmissible unless the co-defendant testifies. The Bruton Rule does not apply to statements made during the course of a conspiracy, United States v. Mitchell, 556 F.2d 371 (6th Cir.), cert. denied, 434 U.S. 925 (1977) or to a confession at joint trial of a co-defendant which does not inculpate the accused. See United States v. Louderman, 576 F.2d 1383 (9th Cir. 1978), or to a confession from which references to the other accused have been redacted. See United States v. Stewart, 579 F.2d 356 (5th Cir.), cert. denied, 439 U.S. 936 (1978).

In the present case, Mr. Castillo-Olivas' initial explanation to Inspector Rodriguez, during which Mr. Castillo-Olivas said the truck belonged to a friend, took place before Mr. Castillo-Olivas was arrested, during routine U.S. Customs questioning. See United States v. Bengivenga, 845 F.2d 593,596 (5th Cir. 1988), cert. denied, _____ U.S. _____, 109 S.Ct. 306 (1988); United States v. Harrell, 894 F.2d 120 (5th Cir. 1990). Mr. Castillo-Olivas' first remarks to Inspector Rodriguez are admissible because the remarks were made during the course of the conspiracy and in furtherance of the conspiracy. Additionally, Mr. Castillo-Olivas' first set of remarks are admissible because they referred to "a friend" rather than Mr. Enriquez-Nevarez.

After Mr. Castillo-Olivas was detained in the head-house, Mr. Castillo-Olivas made statements referring to Mr. Enriquez-Nevarez to Inspector Cordero and later to the U.S. Customs Special Agent investigating the case. The Government proposes and represents to the Court that the Government's witnesses at trial during the Government case-in-chief will be instructed not to repeat Mr. Castillo-Olivas' specific references to Mr. Enriquez-Nevarez only as "a friend" of Mr. Castillo-Olivas. The Government proposes to present testimony about the events in New Mexico on Interstate Highway 25 through a member of the New Mexico State Police. The proposed method of redaction will satisfy the requirements of Bruton, supra. See Richardson v. Marsh, 481 U.S. 200, 107 S.Ct. 1702 (1987) (Bruton applies to



facially incriminating confessions - not to statements where the incriminating character of the statement becomes clear after evidentiary linkage, Richardson, supra, at 208-209.)

III.

CONCLUSION

The Government respectfully asks the Court to deny the Defendant's Motion to Sever on the grounds that the requirements of Bruton, supra, will be satisfied by eliminating direct references to Mr. Enriquez-Nevarez from the statements attributed to the co-defendant, Mr. Castillo-Olivas, during the Government's case-in-chief. See Richardson, supra.

Respectfully submitted, this 10th day of April, 1990.

RONALD F. EDERER
UNITED STATES ATTORNEY

By: GUY TILL
Assistant U.S. Attorney
U.S. Attorney's Office
Colorado Bar No. 7854
511 E. San Antonio
El Paso, Texas 79901
(915) 534-6884

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 1990, a copy of this Motion was mailed to:

(1) Robert Perez, Assistant Federal Public Defender, 700 E. San Antonio, El Paso, Texas 79901.
(2) Ricardo Gonzalez, Attorney at Law, 4621 Pershing, El Paso, Texas, 79903.
(3) U.S. Customs Service Special Agent Michael Powers, Office of Enforcement, 6501 Boeing, Building G, El Paso, Texas 79925.

GUY TILL
Assistant U.S. Attorney

F. The government shall state whether the defendant was the subject of any electronic surveillance, and, if so, shall furnish to defense counsel for inspection and copying any recordings or videotapes which may be offered in evidence at the trial.

G. The government shall cause to be transcribed the grand jury testimony of all witnesses who will testify for the government at the trial of this cause so that their statements can be furnished to defendant pursuant to 18 U.S.C. § 3500.

It shall be the continuing duty of counsel for both sides to reveal to opposing counsel all newly discovered information or other material within the scope of this Standing Order.

The Court may at any time, upon motion properly filed, order that the discovery or inspection provided for by this Standing Order be denied, restricted or deferred, or make such other order as is appropriate. It is expected by the Court, however, that counsel for both sides shall make every good faith effort to comply with the letter and spirit of this Standing Order.

All motions concerning matters not covered by this Standing Order must be filed within ten (10) days of arraignment or waiver of arraignment.

SIGNED AND ENTERED this 16th day of February, 19 90.

HARRY LEE HUDSPETH
UNITED STATES DISTRICT JUDGE

## ADDENDUM C

DISTRICT COURT'S STANDING DISCOVERY ORDER,
FEBRUARY 16, 1990

RJP

2/16/90

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

FEDERAL PUBLIC DEFENDER
RECEIVED
FEB 22 1990
WEST. DIST. OF TEXAS
EL PASO, TEXAS

UNITED STATES OF AMERICA )
)
v. ) EP- 90 CR- 53-H (2)
)
MARIO ENRIQUEZ-NEVAREZ )

STANDING DISCOVERY ORDER

On this day came on to be considered the above-styled and numbered cause. It appears to the Court that, to expedite discovery and bring about full readiness for trial by all parties at the earliest possible date, the following Order should be entered.

It is therefore ORDERED that the parties herein confer and accomplish the following matters within seven (7) days from the date of this Order:

A. The government shall permit the defendant to inspect and copy the following items or copies thereof, or supply copies thereof which are within the possession, custody or control of the government, the existence of which is known or by the exercise of diligence may become known to the government.

(1) Written or recorded statements made by the defendant.

(2) The substance of any oral statement made by the defendant before or after his arrest in response to interrogation by a person then known to be a government agent which the government intends to offer in evidence at trial.

(3) Recorded grand jury testimony of the defendant relating to the offenses charged.

(4) The defendant's F.B.I. arrest record.



(5) Books, papers, documents, photographs, tangible objects, buildings or places which the government intends to use as evidence at trial to prove its case in chief, or which were obtained from or belong to the defendant.

(6) Results of reports of physical or mental examinations, and of scientific tests or experiments, made in connection with this case.

B. The defendant shall permit the government to inspect and copy the following items or copies thereof, or supply copies thereof which are within the possession, custody or control of the defendant, the existence of which is known or by the exercise of diligence may become known to the defendant.

(1) Books, papers, documents, photographs or tangible objects which the defendant intends to introduce as evidence in chief at the trial.

(2) Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case which the defendant intends to introduce as evidence in chief at trial or which were prepared by a defense witness who will testify concerning the contents thereof.

(3) If a defendant intends to rely upon the defense of insanity at the time of the alleged crime or intends to introduce expert testimony relating to a mental disease, defect or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall given written notice thereof to the government.

C. The government shall reveal to the defendant and permit inspection and copying of all information and material known to the government which may be favorable to the defendant on the issues of guilt or punishment within the scope of Brady v. Maryland, 373 U.S. 83 (1963), or which would tend to impeach government witnesses.

D. The government shall disclose to the defendant the existence and substance of any payments, promises of immunity, leniency, or preferential treatment, made to prospective government witnesses, within the scope of United States v. Giglio, 405 U.S. 150 (1972) and Napue v. Illinois, 360 U.S. 264 (1959).

E. The government shall supply the defendant with an F.B.I. rap sheet or other appropriate record of prior convictions of any government witness who is known to have a prior criminal record.

# ADDENDUM D

EXCERPT OF TRIAL TESTIMONY,
JUNE 21, 1990



IN THE UNITED STATES DIS ICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA | NO. EP-90-CR-53H |
| VS. | Trial Proceedings |
| RIGOBERTO CASTILLO-OLIVAS<br>MARIO ENRIQUEZ-NEVAREZ | June 21, 1990 |

Volume 1

Appearances:

| | |
|---|---|
| For the Government: | Francisco Macias<br>Assistant U. S. Attorney<br>United States Courthouse<br>El Paso, Texas 79901 |
| For Rigoberto Castillo-Olivas | Ricardo D. Gonzalez<br>Attorney at Law<br>4621 Pershing Drive<br>El Paso, Texas |
| For Mario Enriquez-Nevarez | Robert Perez<br>Assistant Federal Public Defender<br>Federal Building<br>El Paso, Texas 79901 |
| Court Reporter: | Chris Carpenter<br>439 U.S. Courthouse<br>El Paso, Texas |

The above styled and numbered cause came on for trial before the Honorable Harry Lee Hudspeth, Judge presiding, with a jury, on June 21, 1990, commencing at 9:00 in the morning, in courtroom number 1, United States Courthouse, El Paso, Texas.

we marked it down as number 7 -- and did you write down in your own notes that the search was fruitless?

A. Yes, sir.

MR. PEREZ: I have no further questions, Your Honor.

THE COURT: Any cross?

MR. MACIAS: Yes, sir.

THE COURT: I didn't call on you yet. Wait for your turn at bat.

MR. GONZALEZ: No questions, Your Honor.

THE COURT: You may do you redirect after all.

MR. MACIAS: Thank you, Your Honor. Sorry about that.

R E-D I R E C T E X A M I N A T I O N

BY MR. MACIAS:

Q. (By Mr. Macias) Officer, would you tell us who is "Montoya"?

A. Richard Montoya is a known narcotics smuggler to us, sir.

Q. Why did you follow the defendant?

A. We saw what we believed was a transaction between Enriquez and one of the occupants of the residence, sir.

Q. Would you tell the ladies and gentlemen of the jury what prior information you had about --

MR. PEREZ: Objection, Your Honor.

THE COURT: Sustained.

Q. (By Mr. Macias) Now, when he asked you to -- or when

FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF TEXAS

LUCIEN B. CAMPBELL
FEDERAL PUBLIC DEFENDER

San Antonio

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EL PASO, TEXAS 79901-7001
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September 12, 1991

Mr. William K. Suter
Clerk, Supreme Court
of the United States
1 First Street, NE
Washington, D.C. 20543

RE: **Mario Enriquez-Nevarez**
**v.**
**United States of America**
**No. 91-5087**

Dear Mr. Suter:

Enclosed herewith for filing are an original and nine copies of the Reply Brief of Petitioner in the above-referenced cause.

By copy of this letter we are mailing two copies of the Reply to the Honorable Kenneth W. Starr, Solicitor General of the United States, Department of Justice, Washington, D.C. 20543; and a copy to Mrs. LeRoy Morgan Jahn, Assistant United States Attorney, Western District of Texas, 727 E. Durango Boulevard, A-601, San Antonio, Texas 78206.

Thank you for your attention to this matter.

Very truly yours,

Lucien B. Campbell
Federal Public Defender

Henry J. Bemporad
Assistant Federal Public Defender

HJB/mel
Enclosure
cc: Honorable Kenneth W. Starr
Mrs. LeRoy Morgan Jahn
Mr. Mario Enriquez-Nevarez

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SUPREME COURT, U.S.